

Claimant contends she is entitled to work disability because the offer would have unreasonably required her to work a different shift. Claimant also disputes the Administrative Law Judge's findings concerning her average weekly wage and period of temporary total disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law enumerated in the Award by the Administrative Law Judge are found to be accurate and are adopted by the Appeals Board. The Appeals Board agrees that claimant's refusal of the accommodated job invokes the public policy considerations announced in Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995). The Appeals Board also agrees with the analysis of the record by the Administrative Law Judge regarding the average weekly wage computation and the claim for temporary total disability compensation. Claimant has not shown that there were additional periods of time when she was temporarily and totally disabled. Therefore, claimant is only entitled to temporary total disability compensation while she was taken off work by Dr. Brown.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated September 12, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER**DISSENT**

I do not believe the Foulk decision applies because claimant was justified in declining the first shift job because of transportation problems. The evidence does not establish that claimant was attempting to wrongfully manipulate her workers compensation award.

BOARD MEMBER

c: Darla J. Lilley, Wichita, KS
Gregory D. Worth, Lenexa, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director